IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6121 of 1995

For Approval and Signature:
HONOURABLE **MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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MANIBEN WD/O HARIJAN JAGABHAIPOLABHAI - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR PV HATHI for Petitioner(s) : 1, 1.2.1,1.2.2
MS MINI NAIR AGP for Respondent(s) : 1 - 2.
MR PJ YAGNIK for Respondent(s) : 3,

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CORAM : HONOURABLE MS. JUSTICE R.M. DOSHIT
4th October, 2007.

ORAL JUDGMENT

The petitioner before this Court is the beneficiary of the allotment of land made under Section 29 of the Gujarat Agricultural Lands Ceiling Act, 1960 [hereinafter referred to as, "***the Act***"].

The petitioner challenges the judgment and order dated 18th April, 1994 passed by the Gujarat Revenue Tribunal [hereinafter referred to as, "***the Tribunal***"] in Revision Application No. TEN.BA.227/1993. The respondent no.3 is the grandson of the holder of the disputed land. The disputed land is part of the land Survey No. 341-*paiki,* admeasuring 11 Acres 34 Gunthas, situated at village Doria, Taluka-Sayla.

The disputed land belonged to one Amba Raja of village Doria-the grandfather of the respondent no.3. The said Amba Raja was the holder of the land situated at village-Doria admeasuring 99 Acres 7 Gunthas in aggregate. On 28th February, 1971, he transferred 33 Acres 30 Gunthas of land to his son Talshi; and 38 acres and 26 gunthas of land to his grandson Vikram Talshi-the respondent no.3 herein. As the said transfers were hit by Section 8 [1] of the Act, the said Amba Raja made application under Section 8 [2] of the Act to the District Collector to declare that the said transfers were not made in anticipation to defeat the object of the Act. In the proceeding under Section 8 [2] of the Act, the District Collector, by his Order dated 28th April,

1977 held that the transfer of land admeasuring 33 acres 13 gunthas made in favour of Talshi Amba was valid i.e., it was not made in anticipation in order to defeat the object of the Act. However, transfer of the land, admeasuring 38 acres 26 gunthas, made in favour of the grandson Vikram Talshi was held to be made in anticipation in order to defeat the object of the Act. Thus, as on 1st April, 1976, the specified date, the aforesaid land admeasuring 38 Acres 26 Gunthas transferred to the grand son Vikram Talshi was included in the holding of the said Amba Raja.

In the proceeding under the Act, by Order dated 20th April, 1982 made by the Mamlatdar & ALT, Sayla, the holding of the said Amba Raja was declared to be in excess of the ceiling limit by 11 Acres 34 Gunthas. The said excess land admeasuring 11 Acres 34 Gunthas was vested in the State Government. Pursuant to the vesting of the excess land in the State Government, by Order dated 26th March, 1990, the said excess land admeasuring 11 Acres 34 Guntha was allotted to the petitioner Jagabhai Polabhai. Since allotment of the excess land to the petitioner herein, the respondent no.3 – the grand son of Amba

Raja, the holder of the land, challenged the aforesaid order dated 20th April, 1982 before the Deputy Collector, Limbdi. The Deputy Collector, by his order dated 31st December, 1992, dismissed the said Appeal. Feeling aggrieved, the respondent no.3 preferred the above referred Revision Application No. TEN.B.A.227/1993 before the Gujarat Revenue Tribunal. By the *impugned* judgment and order, the said Revision Application came to be allowed by the Tribunal. Therefore, the present petition.

The Tribunal has held that the proceedings under the Ceiling Act had taken place in absence of the holder of the land-Amba Raja and that the order dated 20th April, 1992 made by the Deputy Collector was not sent to the said Amba Raja. The Tribunal has further held that in the proceedings under the Act, neither the holder - the aforesaid Amba Raja, nor his son-Talshi Amba, nor his grandson-Vikram Talshi was given notice of hearing. The order was made in absence of the said three persons. The Tribunal has further held that on the specified date, the holder Amba Raja had a major son. The holder was, therefore, entitled to retain the land equivalent to two units

of the ceiling area. The total holding of the said Amba Raja being 99 Acres – 7 Gunthas was less than two ceiling area, the said Amba Raja, therefore, did not hold the land in excess of the ceiling limit. The Tribunal also held that vesting of the excess land in the State Government, taking over possession of the excess land and the allotment of land under Section 29 of the Act were all paper entries. Neither the possession of the excess land was actually taken over nor the possession of the excess land was handed over to the allotee of the land. In view of the said findings, the Tribunal set-aside the order dated 20th April, 1982 and the Order dated 31st December, 1992 made by the Deputy Collector, Limbdi.

Mr. Hathi has submitted that the holder of land was the aforesaid Amba Raja. The said Amba Raja had transferred part of his holding in favour of his major son Talshi Amba. Once the said Talshi Amba had separated and had a separate holding, the holder Amba Raja could not have claimed one additional unit of the ceiling area for the major son. The transfer made in favour of the grandson Vikram Talshi was deemed to have made in anticipation in order to defeat the

purpose of the Act as envisaged by Section 8 [1] of the Act. The said land, therefore, was rightly included in the holding of the transferor Amba Raja. He has submitted that in the proceeding before the Deputy Collector, the said Amba Raja was given notice of hearing which he did not accept. The learned Tribunal is, therefore, not right in holding that the proceeding under the Act were conducted in absence of the said Amba Raja. As the holder of the land was the said Amba Raja, he alone was entitled to be heard before the Deputy Collector. The claim that the Deputy Collector ought to have heard son and the grandson of the holder, namely Talshi Amba and Vikram Talshi, is manifestly wrong. He has submitted that once the excess land had vested in the State Government, the appeal against the order dated 20th April, 1982 could not have been entertained by the Deputy Collector. He has submitted that the excess land was allotted to the petitioner. Such allotment was made within the knowledge of the respondent no.3. He did not implead the petitioner in appeal before the Deputy Collector or in the Revision before the Tribunal. The judgment of the Tribunal, passed

without affording opportunity of hearing to the petitioner, is *ex facie* illegal and bad. In support of his submissions, Mr. Hathi has relied upon the judgment of this Court in the matter of ***State of Gujarat v. Patel Kala Sana & Ors.*** [1994 (1) GLR 448].

The petition is contested by Mr. Yagnik. He has supported the *impugned* judgment passed by the Tribunal. He has submitted that the holder Amba Raja having a major son on the specified date, the holder was entitled to retain land equivalent to two ceiling areas. He has submitted that neither the holder Amba Raja nor his son Talshi Amba nor his grandson-the respondent no.3, were aware of the proceedings under the Act. The said Amba Raja was not aware of the decision dated 20th April, 1982 until he died in the year 1986, nor was it known to his son Talshi Amba till he died in the year 1989. It was on 8th December, 1991 that the respondent no.3 came to know of the said order dated 20th April, 1982. He immediately preferred appeal before the Deputy Collector, Limbdi. Thus, the legitimate claim made by the respondent no.3 cannot be denied on the ground of delay and laches or on the ground of bar of limitation. He has

submitted that it was the respondent no.3 who was in possession of the land all along and even pending the proceeding under challenge. He has submitted that this Court exercising supervisory *jurisdiction* under *Article* 227 of the Constitution would not interfere with the *impugned* decision of the Tribunal merely because a second view is possible or that the Tribunal has committed an error of law. In support of his submissions, he has relied upon the judgments of the *Hon'ble* Supreme Court in the matters of ***Mohd. Yunus v. Mohd. Mustaqim & Ors.*** [AIR 1984 SC 38]; of ***Khalil Ahmed Bashir Ahmed v. Tufelhussein Samasbhai Sarangpurwala*** [AIR 1988 SC 184]; of ***Mohan Amba Prasad Agnihotri & Anr. v. Bhaskar Balwant Aher [D] Through Lrs.*** [(2003) 3 SCC 190]; and of this Court in the matters of ***Gujarat Water Supply & Sewg. Board v. Dineshbhai M. Solanki*** [2005 (2) GLH 62]; of ***Koli Rama Rugnath v. Mamlatdar & ALT [Ceiling] Tharad & Ors.*** [2005 (4) GLR 3261]; and of ***Gohil Ragnathsinh Vajesinh & Ors. vs. State of Gujarat & Ors.*** [1994 (2) CGD 265 (Guj)]. Mr. Yagnik has also submitted that the proceedings were mere a paper entry and it was the holder of the land Amba Raja and his successors

who were in possession of the disputed land. The petitioner was, therefore, neither a necessary nor a proper party in the proceedings under challenge.

In Ceiling Case No. 94/1976-77 decided on 20th April, 1982 by the Mamlatdar & ALT, Sayla, a specific reference was made to the notice given to the holder-Amba Raja by registered post. It had also been noted that the holder Amba Raja refused to accept the said notice. In the circumstances, according to the law of evidence the holder was duly served and he was aware of the contents of the notice. As recorded hereinabove, the transfer of land made by the said Amba Raja to his grandson Vikram Talshi was not accepted by the Collector under Section 8 [2] of the Act. The said land, therefore, was rightly included in the holding of the holder Amba Raja. As it was the said Amba Raja who was the holder of the land on the specified date i.e., 1st April, 1976, he was a party necessary in the proceeding under the ceiling Act. The other members of the family had no right to be heard in the ceiling case before the Revenue Authority. The order dated 20th April, 1982, therefore, cannot be *vitiated* on the ground that the

son and the grandson of the holder were not given intimation of the pending proceedings or were not given opportunity of hearing before the revenue authority. In the Order of allotment dated 26th March, 1990 made by the Assistant Collector, Limbdi a specific reference has been made to the notification of vesting of the excess land in the State Government and the publication of the said notification. In answer to the publication of the said notification, no objection was received by the concerned authority. In my opinion, once the excess land had vested in the State Government, the challenge to the order dated 20th April, 1982 declaring the part of the holding to be excess land would not be tenable. Further, in the present case, the appeal against the order dated 20th April, 1982 was preferred after the above referred order of allotment dated 26th April, 1990 was made in favour of the petitioner herein. The petitioner being an affected party was a necessary party in the appeal before the Deputy Collector and in revision before the Tribunal. The order of the Tribunal, having been made in absence of the petitioner, is vitiated on the ground of non-joinder of necessary party also.

Besides, in absence of challenge by the holder of the land, the respondent no.3 who was not the holder of the land on the specified date, had no *locus standi* to challenge the order of Mamlatdar & ALT, Sayla made on 20th April, 1982.

For the aforesaid reasons, the petition is allowed. The *impugned* judgment and order dated 18th April, 1994 passed by the Gujarat Revenue Tribunal in Revision Application No. TEN.BA.227/1993 is quashed and set-aside. The Revision Application stands rejected. Rule is made absolute. The respondent no.3 shall bear the cost of the petition.

{Ms. R.M Doshit, J.}

*Prakash**